

**REMARKS**

The present Amendment is in response to the Office Action mailed May 19, 2005, in the above-identified application. Enclosed herewith is a Petition requesting a three-month extension of time for resetting the deadline for responding to the Office Action from August 19, 2005, to and including November 19, 2005.

As an initial matter, Applicant acknowledges and appreciates the Examiner's indication that claim 11 contains allowable matter. Specifically, the Examiner objected to claim 11 as being dependent upon a rejected base claim, but indicated that the claim would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

In the present Amendment, Applicant has amended claims 1, 11, 12 and 15, and canceled claim 8. Claim 11 has been amended to incorporate the limitations of original claim 1 therein. Support for the amendment of claim 12 is found in FIG. 18a of the present application, which shows a spacer 1023 extending only part way between the first and second ends of the tubular member 1007.

On page 2 of the Office Action, the Examiner noted that the listing of references in the specification is not a proper Information Disclosure Statement. In response, Applicant has amended paragraphs 1 and 5 of the specification to note that U.S. Patent Application No. 10/199,803 has now been published as U.S. Patent Application Publication No. 2004/0012006. Applicant has also filed an Information Disclosure Statement herewith to submit the '006 Publication for consideration by the Examiner.

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a), asserting that "the resilient insulation strips wrapped around the vertical posts" recited in claim 8 must be

shown or the features cancelled from the claims. In response, claim 8 has been canceled.

The Examiner rejected claims 1-3, 5, 7-10, and 12-19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,767,419 to Fattore. Referring to FIGS. 1 and 2 thereof, Fattore discloses a protective pad 10 that is secured over a crib rail. The protective pad 10 is made of a resilient foam material that is covered by a thin flexible sheet-like plastic. The lower edges of the pad include fasteners that are secured together after the protective pad is placed over a top rail of a crib. As shown in FIG. 3 thereof, Fattore does not include insulation provided in an interior space of the pad for sealing the interior space. Referring to FIG. 3 thereof, Fattore's protective pad 10 includes a pneumatic noisemaker 52 that is captured between the flexible sheet-like material 50 and the padding of resilient material 48. The pneumatic noisemaker 52 is not in contact with the upper rail 12.

Applicant respectfully asserts that claim 1 is unanticipated by Fattore because the reference neither discloses nor suggests a combination including "a spacer positioned between the inner surface of said tubular member and said at least one top support bar for supporting said tubular member between said vertical posts, wherein said spacer is in contact with said tubular member and said top support bar for preventing sagging of said tubular member between said vertical posts." Claim 1 is also unanticipated because Fattore neither discloses nor suggests a combination including "insulation material disposed in the slot and the interior space of said tubular member for sealing the interior space of said tubular member." Claims 2-3, 5, 7, and 9-10 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Independent claim 12 is unanticipated by Fattore because the cited reference neither discloses nor suggests "a spacer positioned within the interior space of said tubular member and in contact with both the inner surface of said tubular member and said at least one top support bar for supporting said tubular member between said vertical posts." Claims 13-14 are unanticipated, *inter alia*, by virtue of their dependence from claim 12, which is unanticipated for the reasons set forth above.

Independent claim 15 is unanticipated by Fattore because the cited reference neither discloses nor suggests "a tubular member having [an] inner surface defining an interior space" and "insulation material disposed in the slot and within the interior space of said tubular member for sealing the interior space of said tubular member." Claims 16-19 are unanticipated, *inter alia*, by virtue of their dependence from claim 15.

The Examiner rejected claim 12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,220,316 to Naka et al. Referring to FIG. 7 thereof, Naka teaches a top rail member 24 having a resilient cushion layer 25 and a surface protection layer 26. Applicant respectfully asserts that claim 12 is unanticipated by Naka because the cited reference neither discloses nor suggests a combination including a fence, a tubular member and a spacer, "wherein said spacer extends only part way between the first and second ends of said tubular member."

The Examiner also rejected claims 15-17 and 20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,328,156 to Hoke. Referring to FIGS. 1 and 2 thereof, Hoke discloses a U-shaped member that is secured to a bottom portion of a chain-link or wooden fence. Applicant respectfully asserts that claim 15 is unanticipated by Hoke because the cited

reference neither discloses nor suggests a combination including a fence, a tubular member, and "insulation material disposed in the slot and within the interior space of said tubular member for sealing the interior space of said tubular member." Clearly, Hoke neither discloses nor suggests that an insulation material is used within the U-shaped member secured to a fence. For all of these reasons, claim 15 is unanticipated by Hoke and is otherwise allowable. Claims 16-17 and 20 are unanticipated, *inter alia*, by virtue of their dependence from claim 15.

In the Office Action, the Examiner also rejected claims 4 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Fattore. In view of the patentability of claim 1 over Fattore as discussed above, Applicant respectfully asserts that claims 4 and 6 are also allowable over Fattore.

Claim 11, which has been amended to incorporate the limitations of original claim 1 therein, is allowable because the Examiner indicated that it contained allowable matter.

In view of the above, it is respectfully requested that these amendments now be entered, and the pending claims allowed.

If, however, for any reason the Examiner does not believe such action can be taken, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any objections which he may have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Applicant's Deposit Account No. 12-1095 therefor.

Application No.: 10/816,706

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Respectfully submitted,

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